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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 5th Day of June 1998

BEFORE

THE HON'BLE MR. JUSTICE V.P. MOHAN KUMAR

WRIT PETITION NO.15504/1998
C/W W.P.6839/1998

BETWEEN:

Sri. Prakash,
s/o Sri. Bhaskar,
aged about 56 years,
Ex-Conductor,
Raichur Depot,
R/o. P.H.E. Colony,
Raichur.

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...PETITIONER

(By Sri. V.S. Naik, Adv.)

AND:

1. The Management of
Karnataka State Road
Transport Corporation,
Raichur Division,
Raichur,
rep. by the
Divisional Controller.

2. The Presiding Officer,
Labour Court,
Gulbarga.

) Common in
) WP 6839/98

...RESPONDENTS

IN W.P.6839/98

Karnataka State Road
Transport Corporation,
Central Office, Bangalore,
by its Chief Law Officer,

...PETITIONER

(By Sri K.L.N. Rao, Adv.)

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IN W.P.6839/98

AND:

1. Prakash,
s/o Bhaskar,
major,
Ex-Conductor,
KSRTC,
Raichur Depot,
R/o P.H.E. Colony,
Raichur.

...RESPONDENT

(By Sri. T.P. Nambiar, AGA
Common in both W.Ps)

W.P.15504/98 is filed under Articles 226 & 227 of the Constitution of India, with a prayer to quash that portion of the award passed by the Labour Court dt. 5-12-96 vide Annex-A by which the Labour Court has denied 25% back wages from 14-6-94 onwards apart from denying the back wages and continuity of service from the date of dismissal till the date of granting the interim relief in as much as denial of these benefits is unjust, arbitrary and the Labour Court has committed several errors which are apparent on the face of the records and etc.

W.P.6839/98 is filed under Articles 226 & 227 of the Constitution of India, with a prayer to quash vide Ann-A dt. 5-12-96 and etc.

These Writ Petitions coming on for preliminary hearing and further orders respectively this day, the Court made the following:-

O R D E R

Both the worker as well as the management challenges the award passed by the Labour Court.

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Writ Petition No.6839/98 is filed by the management whereas Writ Petition No.15504/98 is filed by the worker.

2. The worker in question was a Conductor. While he was conducting the bus in the year 1989, in the route Raichur-Adoni, it is alleged that he did not issue tickets to 8 passengers travelling in the bus. Charges were framed against him and domestic enquiry was conducted. At the domestic enquiry, he was found guilty of charges and therefore he was dismissed from service. He raised a dispute before the Labour Court. The Labour Court held that the domestic enquiry is invalid by its order dated 16-08-1996. Thereafter it is seen that the Labour Court by its order dated 23-09-1996 ordered to reinstate the worker into service as interim relief. Ultimately the Labour Court set aside the dismissal and passed an award granting the following relief:-

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"The claim petition of the claimant is allowed as under:

The order of dismissal passed by the Respondent II-Party as per Ex.M27 dated 15-2-94 against the claimant I-Party Prakash Bhaskar is hereby set aside to the extent of punishment which is disproportionate to the gravity of the misconduct.

The Respondent II-Party is directed to reinstate the claimant I-Party to his original post.

The Claimant I-Party is entitled for back wages at the rate of 75% of the wages what he was getting at the time of dismissal or 75% of the wages in the current rate whichever is more from the date of granting the interim relief i.e., 14-6-94. The claimant is deemed to have been continued in service from the said date.

It is hereby ordered that the claimant I-Party is not entitled for back wages and continuity of service from the date of dismissal 15-2-94 to till the date of granting



the interim relief i.e., 13-6-94
as a lesser punishment.

I direct both the parties to
bear their respective costs."

3. The award as stated earlier is
challenged by the management as well as the
worker. I have heard learned counsel for the
management Mr.K. Lakshminarayana Rao as also
Mr. V.S. Naik, learned counsel for the worker.

4. I do not feel that this is a case where
this Court should interfere with the award,
except to the extent of modifying award relating
to the backwages. It is disclosed from the
pleadings in the writ petition filed by the
management as also from the award and other
materials that the passengers who were travelling
without tickets were the passengers travelling
on the top of the bus. One fails to understand
as to how the passengers were allowed to travel

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in such manner. The K.S.R.T.C. should take steps to prevent the passengers from travelling on the top of the bus. It is not possible for the conductor who will be inside the bus to climb the ladder and issue tickets to such passengers. That apart it may not be practical for a conductor to decline permission to the passengers to board on top of the bus. Apparently as stated by Mr. Naik, if such objection is made by the Conductor, the crowd may turn violent and the person who will be at the receiving end of the wrath will be the conductor. In such circumstances, the conductor cannot be in a position to prevent such passengers travelling on the top of the bus unless the K.S.R.T.C. takes a decision in this behalf. As such non-issue of tickets to the passengers who board the bus on top of it cannot be held as misconduct of the worker. The Labour Court was justified in holding that dismissal is disproportionate punishment to

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the charges levelled against the worker.

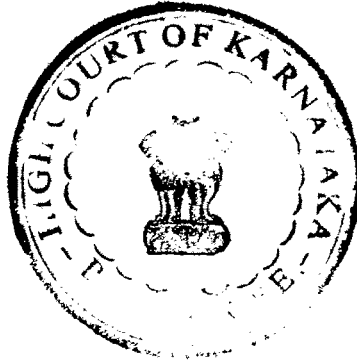
5. As regards the backwages is concerned, the Labour Court has awarded 75% of the wages that the worker was getting at the time of dismissal or 75% of the wages in the current rate whichever is more from the date of granting the interim relief. When once the dismissal is held improper, necessarily the worker should get the wages from the date of dismissal itself. After hearing the respective sides I feel that worker should be awarded 50% backwages from the date of dismissal. Another aspect of the matter which the Labour Court has disallowed is the continuity of service. There is no justification for this punishment. That part of the award is hence vacated.

6. In the result, the award of the Labour Court is so far as it relates to reinstatement

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is confirmed. The award with respect to the backwages is modified. The worker will be entitled to 50% backwages from the date of dismissal till he was reemployed as per the interim order i.e., 23-09-1996 and the worker will be entitled for continuity of service as well. Writ Petitions disposed of as above.



Sd/-
JUDGE

ksp/

bnv/-